

Internal Revenue Service
memorandum

TL-N-5473-88

CC:TL:TS JLRICKS

date: **15 JUN 1988**

to: Chief, Tax Shelter Section EX:C:T

from: Director, Tax Litigation Division CC:TL

subject: Tax Shelter Registration - Consent to Extend the Time to
Assess Penalties

This memorandum is in response to your request for technical advice, dated April 11, 1988.

ISSUE:

1. Whether the District Director of the Internal Revenue Service or the Regional Director of Appeals may use an existing consent form to extend the time of assessing an I.R.C. § 6707(a) penalty against an organizer of a tax shelter?
2. If an existing consent form cannot be used, what language should be used to prepare a new consent form for section 6707(a) penalties?

CONCLUSIONS:

1. No. The existing consent forms to extend the time to assess tax, including Forms 872 and 872-A, should not be used to extend the statute of limitations for section 6707(a) penalties.
2. See Attachment #1 for our suggestions regarding the proposed language.

FACTS:

The Service takes the position that certain penalties imposed under section 6707 have a three year statute of limitations. If a person registers the tax shelter under section 6111(a) after the required date, the penalty must be assessed within 3 years of registering the tax shelter. Moreover, the penalty under section 6707(a)(1)(B), for providing false or incomplete information, must be assessed within 3 years of registering the tax shelter.

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The Examination Division is considering whether it can use an existing consent form to extend the three year statute of limitations for these penalties.

DISCUSSION:

1. Forms 872 and 872-A would not be appropriate to use to extend the statute of limitations for the section 6707(a) penalties for three reasons. Firstly, the forms ask for the amount of a type of "tax due", and refers to a final determination of "tax." In this instance, no determination of tax is necessary since the section 6707(a) penalties are assessable penalties and are not treated as a tax pursuant to section 6662. Compare section 6707 with the additions to tax and additional amounts imposed under sections 6651 through 6661. Secondly, the forms were written to generally extend the statute of limitations for a myriad of issues on a return, while the consent form for the section 6707(a) penalties would only involve the extension of the statute for one or two specific issues.

Thirdly, these forms refer to the consequences if a notice of deficiency in tax for the periods involved are sent to the taxpayer before the expiration date. Yet, the section 6707 penalties are not subject to the deficiency procedures of Subchapter B of Chapter 63. See section 6662. A statutory notice of deficiency is not sent to the taxpayer. Accordingly, section 6707 penalties are assessed based on the information recorded on a Form 8278.

2. We have modified Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes, to be applicable to section 6707(a) penalty assessments. Both Form 872-B and our suggested modifications to that form are attached hereto.


We suggest that the name of the tax shelter and the date of registration be included in the consent form. In addition, we recommend that paragraph (3) of Form 872-B, concerning the assessment date as a terminating event, be deleted for two reasons. First, the assessment date is seldom known to a taxpayer until the taxpayer receives the bill. Secondly, there has been litigation concerning what constitutes the "final determination of tax and the final administrative appeals consideration." The issue of whether an assessment constitutes a final determination will not arise in future litigation where that paragraph has been deleted.

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If you have any questions concerning the foregoing matter, please contact Jo Lynn Pinks at 566-3350. This technical advice has been coordinated with Branch No. 4 of the Tax Litigation Division.

HARLENE CROSS

By:


PAMELA V. GIBSON
Acting Chief
Tax Shelter Branch
Tax Litigation Division

Attachments:
As stated.